

SHARIAH AND ELECTORAL ACT: CONFLICTING OR COMPLEMENTARY?

BY

PROF. IBRAHIM AHMAD ALIYU

DEPARTMENT OF ISLAMIC LAW
FACULTY OF LAW
AHMADU BELLO UNIVERSITY
ZARIA

PRESENTED AT

NATIONAL CONFERENCE ON ISLAM AND DEMOCRACY IN NIGERIA
ORGANIZED BY THE INTERNATIONAL FOUNDATION FOR
ELECTORAL SYSTEMS (IFES/NIGERIA) IN COLLABORATION WITH
CENTRE FOR DEMOCRATIC RESEARCH AND TRAINING, MAMBAYYA
HOUSE, BAYERO UNIVERSITY, KANO, FROM MARCH 18 19, 2009 AT
GIGINYA HOTEL, SOKOTO, SOKOTO STATE.

SHARI'AH AND ELECTORAL ACT: CONFLICTING OR COMPLEMENTARY?

B y

Prof. Ibrahim Ahmad Aliyu

Department of Islamic Law

Faculty of Law

Ahmadu Bello University

Zaria

Presented at :

National Conference on Islam and Democracy in Nigeria organized by the International Foundation for Electoral Systems (IFES/Nigeria) in collaboration with Centre for Democratic Research and Training, Mambayya House, Bayero University, Kano, from March 18 – 19, 2009 at Giginya Hotel, Sokoto, Sokoto State.

1. INTRODUCTION

Democracy is identified as a cornerstone of Western Civilization which has been prescribed for the rest of the world including the Muslim world. And at independence, Nigeria was put on the path of democracy. It is a known fact that a democratic government can only be formed through elections. However, the outcome of the elections, especially in Nigeria, has always been the popular dissatisfaction with the way and manner the elections are conducted. This dissatisfaction has always earned not only petitions and counter petitions but also serious violence which consequently causes losses of property or even lives.

Muslims always participate in this confusion and disorder without thinking about what they do, from the point of view of the *Sharia'ah* which Muslim ought to believe and know that it is his complete way of life. It is thus important to clarify the position of not only Electoral laws but also of the democratic system under which the Electoral Law are formulated and implemented. This is what exactly this paper attempts to do. So the paper attempts to give a brief exposition of what the *Shari'ah* is all about and its main objectives, democracy, its objectives and how it differs with the Islamic system, an overview of the Nigerian Electoral Act, its problems and imperfection and conflict with *Shari'ah*, the conditions for the Muslim's participation in the democratic system which is un-Islamic and conclusion.

2.0 MEANING, NATURE AND OBJECTIVES OF THE SHARI'AH

The term *Shari'ah* is an Arabic word which literally means straight path or road to the watering place. And it is an established fact, even in the Qur'an (in *Suratul Anbiya*, 21:30)

that water is the source of life. Allah the Almighty, in the verse, says:

وَجَعَلْنَا مِنَ الْمَاءِ كُلَّ شَيْءٍ حَيٍّ

Technically, *Shari'ah* has been defined by al-Qurtabi as the canon law of Islam, all the different commandments of Allah to mankind.²

Shari'ah is thus a clear and straight path designed by Allah (S.W.T) the Creator for man to walk on. It lays down the entire scheme of life in such a way that virtues may flourish and vices may not contaminate human life. To achieve this end, it has embraced in its scheme all factors that encourage the growth of good and has established steps for the removal of impediments that may prevent its growth and development. So what is technically called “law” that needs coercive power of the state for its enforcement, is only a part of the whole scheme of the *Shari'ah*. It is only this part which is usually backed by political authority that the modern conception of law is given. But *Shari'ah*, has other aspects which other systems do not have. These include an aspect that is enforced by the conscience inculcated by faith; an aspect that is enforced by the training of the man's character and purification of his heart and morals.

From this explanation, it is clear that the *Shari'ah* has the following important characteristics:

1. That it is divine in both origin and objective. It thus embodies the will of Allah who is sovereign and the source of law to whom the obedience of man is due. This fact has been enunciated in the Qur'anic verse 7:54 which provides

أَلَا لَهُ الْخَلْقُ وَالْأَمْرُ تَبَارَكَ اللَّهُ رَبُّ الْعَالَمِينَ (٥٤)

Surely His is the Creation and commandment. Blessed is Allah, the Lord of the *alamin* (mankind, jinns and all that exist).³

Since it is divine it is definitely free from selfishness, favouritism, partiality and contradiction. Thus human beings

are regarded as equal irrespective of any consideration as it has been provided in 49:19. Accordingly, all human beings are equal before the law as there is no privileged class or group.

This is also the reason why there is no conflict, under the system, between law and morality as is the case under secular systems. Rather morality is even the basis of the law or even the higher goal of the *Shari'ah*. That is why the Prophet (S.A.W) was reported to have said, "I have been sent only for the purpose of perfecting good morals."

2. That it is comprehensive and all-embracing dealing with every aspect of human activities and endeavors in this life on earth. The Law-giver Himself has testified to this in 6:38

مَا فَرَّغْنَا فِي الْكِتَابِ مِنْ شَيْءٍ

"We have neglected nothing in the book⁴

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِّلْمُسْلِمِينَ (٨٩)

"And We have sent down to you the Book (the Qur'an) as an exposition of everything, a guidance, a mercy and glad tidings for those who have submitted (to Allah as Muslims.)"⁵

On the comprehensive nature of the *Shari'ah*, Joseph Schacht has this to say:

The sacred law of Islam is an all-embracing body of religious duties, the totality of Allah's command, that regulates the life of every Muslim in all its respects; it comprises on an equal footing ordinances regarding worship and ritual as well as political and (in the narrow sense) legal rules."⁶

This comprehensive nature of the *Shari'ah* has made it to be a permanent system for all times and generations and consequently a universal system that is not limited to certain time, generation, place or people. It is in, in fact Allah's mercy to all His servants. The Qur'an, in 21:107 and 7:158 has confirmed this fact.

3. That it has dual nature of immutability (*ath-Thabat*) and dynamism (*al-Murunah*). Thus on one hand it consists of some fixed and absolute principles and objectives that do not change and on the other it responds to changing conditions in human endeavours. In other words while the *Shari'ah* system provides the general guidelines on every aspect of human life, it does not necessarily provide the way or means (of doing things) with the view to giving man ample space to choose what he thinks is the best method that fits his circumstances, time, environment and condition in accordance with the general and absolute guidelines by means of *ijtihad*. This is one of the most important things that have made the *Shari'ah* a living system.

4. That it is practicable because it takes the facts of reality into consideration in all its laws. That is why it neither prohibits anything that man needs for his life nor does it permit what is harmful to him. This explains why it does not prohibit adornment or wearing beautiful clothes, provided that in doing that, the limits set by the *Shari'ah* are transgressed. This is in accordance with the Qur'anic verse 7:31-32.

It also takes into consideration that human beings naturally like to play, have fun and recreation. It thus makes all these permissible provided, they do not involve prohibited things. And considering the nature of women for loving beautification and adornment, it legalizes for them what it prohibits to men, such as wearing gold and silk.

It is also an indication of this consideration of the reality that it contingently permits what is normally *haram* (prohibited). The legal maxim in this respect is *ad-Daru'rat Tubihul-Mahzurat* (Necessity makes permissible) what is prohibited) which has been based on the Qur'anic provision in 2:173.

It also recognizes human weakness with regard to many forbidden things and accordingly blocks the ways to them.

This explains why private meetings in a secluded place between a man and a woman out of wedlock are forbidden. Likewise lustful looks at the opposite sex are forbidden.

It also recognizes sexual urge of man so it does not despise it. It, instead, prescribes that the institution of marriage is the honourable way by which man can gratify his sexual urge and preserves the human species.

It is a clear indication of the practicability of the *Shari'ah* that where the practice of what is ideal is not possible under the circumstance one is only expected to do what is practically possible. This in accordance with the Qur'anic verses 2:286 and 65:7.

A renowned contemporary Muslim jurists Sheikh Yusuf al-Qardawi has described this principle in a form of a legal maxim as: an-Nuzul Minal Mathalil A'la ilal Waq'il Adna. However, as mentioned by a classical jurist Shaykhul Islam Ibn Taymiyyah and quoted by al-Qardawi, it is obligatory upon the Muslims to strive for correcting the situation (they should not relent their efforts) until what is ideal is achieved.⁷

With regard to the main objective of the *Shari'ah*, Abul Ala Maududi, is of the view that it is to construct human life on the basis of al-Ma'ruf (i.e. all the virtues and good qualities that have always been accepted by the human conscience) and cleanse it of al-Munkar (i.e. all the vices and evils that have been condemned by human nature as evil). This means that al-Ma'ruf is in harmony with human nature and its requirements in general and al-Munkar is the opposite. However, by human nature, I mean the nature according to which human beings are originally created as explained by the Qur'an 30:30

فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ (٣٠)

And so set thy face I(i.e. surrender thy whole being) steadfastly towards the (one ever-true) faith, turning away from all that is false, in accordance with the natural disposition which God has instilled into man (for,) not to allow any change to corrupt what God has thus created – this is the (purpose of one) ever-true faith, but most people know it not.⁸

And the hadith narrated by Bukhari and Muslim quoted by Asad put it in a clearer term. In the hadith, the Prophet (S.A.W) was reported to have said:

Every child is born in this natural disposition (at-Fitrah); it is only his parents that later turn him into a Jew, or a ‘Christian’, or a ‘Magian’.”⁹

It is by virtue of this objective that the purpose for which man has been created (that is worship in its widest sense) and the purpose for sending the Messengers of Allah (that is to establish justice on earth) as indicated by the Qur’an in 51:56 and 57:25 respectively.

3.0 Democracy and the Question of Its Compatibility with the *Shari’ah*

The word “democracy” is derived from two Greek words *demos* which means “people” and *kratia* which connotes “rule.” Thus, literally, democracy means rule by the people. Beyond this, there is no agreement on its meaning.¹⁰

In its wide connotation the term, according to Muhammad Asad, implies the peoples’ unrestricted right to legislate by majority vote on all matters of public concern.¹¹

This shows that in democracy, sovereignty, at least in theory, belongs to the people. This concept of sovereignty leads to another philosophical aspects of democracy, namely secularism; Both of them are repudiated by the *Shari’ah* as pointed by Mawdudi. On this he says:

“The political philosophers have tried to place the cap of sovereignty on man – a being for whom it was never intended and whom it can, therefore, never fit.”¹²

Thus Islamic polity is established on the foundation of the sovereignty of Allah and the vicegerence of man. In other words, sovereignty belongs to Allah alone and human beings are mere executors of His will. So sovereignty of Allah is the starting point of the Islamic political philosophy. Maududi added that “None is entitled to make laws on his own authority and none is obliged to abide by them. This right vests in Allah alone.” To this effect he quoted 12:40, 3:154, 16:116, 5:44, 7:54 of the Qur’an. He even rightly mentioned that even the Prophet (S.A.W) himself according to 6:50 is subject to Allah’s command. And other people are only enjoined to obey the Prophet (S.A.W.) because he enunciates not his own but Allah’s command.¹³

Acceptance of *de jure* sovereignty of Allah to Whom also *de facto* sovereignty belongs (which is inherent and manifest in the working of the entire universe) and Who enjoys exclusively the sovereign prerogative over all creation has been made in Islam to be part and parcel of *Iman* (faith). And denial of this is *kufr* (disbelief).

From this, it is clear that the philosophical basis of democracy, in the form of popular sovereignty is a negation of a Muslim’s faith. This is even the view of a renowned Muslim scholar of our contemporary time ash-Shaykh Sa’id Hawwa in his book al-Islam where he mentions that ascribing the right to command and or to prohibit (*al-Amr wan Nahy*) the right to legalize and forbid, in short the right to legislate laws (*haqqut-Tashri’*) which is the essence of sovereignty is a negation of the claim to *shahadatan* (testimony that there is no deity worthy of worship except Allah and that Muhammad is His Messenger). He opines that what is called ‘democracy’ is part of this negation, because by virtue of the popular sovereignty, this is exactly what is done which amounts to

usurping sovereignty of Allah. To support his argument, he quoted many Qur'anic verses, including 9:31 which describes one of the most terrible deviations of the Jews and Christians of following the laws their rabbis and monks formulated for them.¹³

In interpreting the verse (9:31), Sayyid Qutb quoted the hadith of Adiy ibn Hatim, narrated with various versions by Imam Ahmad, at-Tirmidhi and Tabarani in which the Prophet (S.A.W) interpreted “worship” to mean following the law. The Jews and Christians, have been accused of regarding their rabbis and monks as Lords even though they did not make them lords in the sense that they treated them as gods or that they offered their worship rituals to them. Yet Allah describes them in this verse as “associating partners with Him”. This is only because they followed the laws they devised for them in disregard to Allah’s laws. This, alone, according to him, is sufficient to make anyone who does it a person that associates partners with Allah which takes him out of faith altogether and puts him in the category of unbelievers.¹⁵ He then concludes thus:

The religion of truth which is the only one that is acceptable to God from any human being is ‘self surrender’. Such surrender is manifested by implementing God’s law, after having believed in His oneness and offering worship to Him alone. If people are to implement a law other than that of God, then what God has said about the Jews and Christians will apply to them as well. In other words, they would be idolators and unbelievers, no matter how emphatically they assert that they believe in God. Those descriptions will apply to them once they willingly implement a law devised by human beings in total disregard to God’s law, unless they protest that they only follow such laws against their wishes and they have no power to repel that compulsion.

Another important aspect of democracy, which is also not acceptable to Muslims is secularism. Secularism arose in the West due to the conflict which ensued between Christianity

on the one hand, and science and movements for social reforms on the other. It sprang, in the West “from the turmoil which proceeded, and still more from that which followed the passing of Reform Bill of 1832 (in England).”¹⁷

According to Maryam Jamila¹⁸ secularism was meant purposely to be an alternative way of life to Christianity and was never meant to live side by side with it. This course of action taken by the West meant in essence, that the West, by virtue of its experience was fed up with Christianity: hence it revolted against it and reverted almost totally to Graceo-Roman culture.¹⁹

But because of West’s experience of Christianity, it came to regard all religions (including Islam even through it is not a mere religion) in the way it sees Christianity, namely as reactionary and anti-science, anti-knowledge and anti-justice system which any society must discard if it wants to progress and advance. This is obviously wrong because as far as the experience of Muslims with Islam is concerned it differs from that of the West with Christianity. This is because Islam provides a complete scheme of life which sets out clearly the ways in which man should fulfill his spiritual and physical needs, the precise principles of right and wrong, that is norms of moral behaviour, the rights and obligations of man; the scheme of social security and a complete political and economic scheme.²⁰ In fact Islam has always been liberating system for human being as Muhammad Asad²¹ explains in the following words:

Almost without single exception, the great exponents of Islamic theology and jurisprudence were the most jealous guardians of human rights. It is they who always stood up frequently at the cost of great personal sacrifice, and sometimes even martyrdom against tyranny and oppression, and thus imposed the most severe checks on the power holders’ will to exploit.²²

On the attitude of Islam towards science and intellectual endeavours, generally, he explains that Islam has never opposed them; rather it confers on them the sanctity of worship.²³

It is obvious, from this explanation, that secularism has no justification in Muslim society. It is even irrelevant and unwanted, because as Dr. Dahiru Yayaha (now Professor) says “Secularism is essentially a Western solution to Western problem.”²⁴

Since secularism is totally incompatible with Islam, no Muslim society can survive or progress under it. Professor Hocking of Harvard University in his book The Spirit of World Politics, in explaining this fact and the fact that Islam offers humanity more opportunity for advancement than any other system, has this to say:

Islamic lands will not progress by merely imitating Western arrangements and values. Can Islam produce fresh thinking, independent laws and relevant statutes to fit the new needs raised by modern society? Yes! And more! Islam offers humanity greater possibilities for advancement than others can. Its lack is not ability – but the will to use it. In reality Shari’ah contains all the ingredients needed.²⁸

However, some people, especially the enemies of Islam, cite example with Turkey to show that a Muslim society can be secular. They do not know that Mustapha Kamal Atatürk only betrayed Islam by leading Turkey into secularism which may not be surprising if they know who he is and what are his characters and belief the brief of which has been extracted from his biography written by Irfan Orga and Margret as follows:

He sought refuge in drink, for he had no God to console him and no belief in an after-life. He felt at home with the prostitutes and homo-sexuals because they were so much worse off than he. He never credited people with feelings

since he had not himself had any save the fundamental urge to conquer and see others submit to his will.

He had advocated (in his youth) elimination of the Shari'ah, ecclesiastical courts of kadis the exponents of the Islamic law and judged these to be replaced by civil courts of laws.

He recognized that his real fight was against religion. Since childhood he had no use for God, an abstract name wrapped in mystery and fallacy (according to him).

He was determined to outlaw religion either by force or guide. He had no compunction in denying religion to his nation.... Since he gave nothing in its place but the new God, Western Civilization, it was hardly surprising that the nation fought for its soul.²⁶

However, in spite of Ataturk's brutal policies of secularization and westernization of turkey his effort failed because no Muslim society can remain secular for a long time. Bernard Lewis, on what happened in turkey says:

After a century of Westernization, Turkey has undergone immense changes – greater than any outside observer had thought. But the deepest Islamic roots of Turkish life and culture are still alive, and the ultimate identity of Turks and Muslim in Turkey is still unchallenged. The resurgence of Islam after a long interval responds to a profound national need... the path that the revival of Islam will take is not still clear. If simple reaction has its way, much of the work of the last century will be undone, and Turkey will slip back into the darkness (i.e. Islam) from which she so painfully emerged...²⁷

And a Zionist Professor of History, Uriel Heyd in a lecture, at the Hebrew University, Jerusalem on "Revival of Islam in Modern Turkey" admitted that there were signs of resurgence of Islamic consciousness and practice in Turkey. He says:

Ataturk's secular reforms had not penetrated very deeply into religious masses of the urban and particularly the rural population... Moreover, Turkish Nationalism and Western Civilization, the two main pillars of Ataturk's cultural orientation, have proved incapable of filling , even for many educated Turks, the spiritual vacuum created by the elimination of Islam...

4.0 An Overview of the Electoral Act

One of the biggest failure of democracy, according to Abid Ullah Jan, is that people with double digit IQs are not voting because they can see through the farce of elections and incompetence of its institutions.²⁸ This is more factual and clearer in Nigeria. This is because one of the most prominent features of Nigeria's problems in democracy is the outcome of every election since 1966. The outcome has been the popular dissatisfaction with the ways and manner elections are conducted which consequently lead to not only petitions but violence resulting to loss of both lives and properties.

Listening and giving decisions in respect of election petition is the responsibility of the judiciary. But the judiciary must base its decisions on the laws or Acts enacted by the Legislators, another arm of government. However, "the work of such election petitions often produce 'wonders', in the sense that the ordinary citizen, the educated layman and a times even (the) learned legal minds, are more often than not puzzled by such decisions."²⁹

The sordid state of affairs exhibited by the decisions of the Election Petition Tribunals is described by Agbakoba and quoted by Prof. B.Y. Ibrahim as follows:

No matter the way it goes, the decision of a tribunal often creates ill-feelings, rob somebody of a perceived victory, deny a section of the society what they perceive to be an opportunity to take a bite at the 'national cake'. It is more painful if the aggrieved party has waited for long to win the election or has held power for long and would not want to let

it go. The decision of a tribunal would of course enhance or put an end to those ambitions. The effect would now depend on whether the people, on losing side, are civil or matured enough to stomach a judicial defeat. But how many of such people play politics in the Nigeria of today.³⁰

Then Prof. B.Y. Ibrahim after quoting Agbakoba comments thus:

The assumption from the above quotation is simply that the decisions of the Election Tribunals merely confirm the robbery of success from the accused election winner and the defeat of the later is “a judicial defeat.” In other words, the perception is that the Election Petition Tribunals are part and parcel of the electoral fraud or malpractice in Nigeria.”³¹

The Election Tribunals are set up by the Electoral Act and guided or (mis-guided) by it. Thus the Act is the source of the problem. The Act as it was observed by the Supreme Court was found to be “riddled with absurdities and anomalies and several inconsistencies, making it the clumsiest Electoral Act ever in the history of this country.... The Election Tribunals were no doubt confronted with very difficult task, they had little room for abridging time or number of parties and witnesses.”³²

One of such provisions, is S.146 (1) of the Electoral Act 2006 which states that “An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.”³³

Although, the reason behind the inclusion of this provision, it is agreed, was to ensure that the court does not nullify an election on flimsy grounds, it makes the Court to be over-cautious in its decision and prompt electoral malpractices which are found by almost all the election petition tribunals,

except in few cases, the Courts have been reluctant to annul election result taking the provision (i.e. S.146) as a cover.³⁴

S.144 (2) of the Act is another example of its absurdity because, to make the non-joinder of certain person (who may be a police officer), is fatal and unjust. This is a serious problem created by the Electoral Act and regrettably upheld by the Court which supports the perpetration of electoral fraud.

To show absurdities, anomalies and inconsistencies of the Act, there is no need to go into details. The testimony of the highest Court of the land (the Supreme Court) which has been cited, is enough. And this shows how the Act has become the source of injustice and fraud.

5. Whether the Shari'ah and Electoral Laws are Conflicting or Complementary

The answer to this question needs not be prolonged, because from the previous discussion, it is clear that these laws are seriously defective and lead to injustice which is seriously opposed to the *Shari'ah*. The two belong to two different atmospheres.

This leads us to the question of compatibility of the system under which these laws have both been enacted and implemented, namely democracy with *Shari'ah*. Debate on whether or not, *Shari'ah* and democracy are compatible or not may not lead us to a definite answer, but what is clear is that democracy in English, with its literal meaning, denoting fair and equal treatment of everyone and the right of the people to take part in making decisions based on consultation (*shura*) is not against the *Shari'ah*. But democracy as a philosophy or ideology in which sovereignty is vested in the people and state is separated from religion, is antithesis to *Shari'ah* and, therefore, incompatible with it. It even negates the Muslims' faith as we have already seen.

6. Muslims' Participation in the System

Implementing the *Shari'ah* by the Muslims in all aspects of their life (without any exception) is not only important but has even been made to be a pre-requisite of their faith (*iman*) without which the *iman* is considered, according to the Qur'anic verse 4:60 as a mere assertion. The verse reads thus:

أَلَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا أُنزِلَ إِلَيْكَ وَمَا أُنزِلَ مِنْ قَبْلِكَ يُرِيدُونَ أَنْ يَتَحَاكَمُوا إِلَى الطَّاغُوتِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ ضَلَالًا بَعِيدًا (٦٠)

Have you not seen those who claim that they believe in that which has been sent down to you, and that which was sent down before you? They wish to go for judgment (in their affairs) to *Tagut* (i.e. false judges) while they have been ordered to reject them. But *Shaitan* (satan) wishes to lead them far astray.³⁵

In another verse (33:36) Allah (S.W.T.) says:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا (٣٦)

It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in the decision. And whoever disobeys Allah and His Messenger, he has indeed strayed into a plain error.³⁶

In yet another verse (4:65) Allah (S.W.T.) says:

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحْكَمُونَكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا (٦٥)

But no, by yours Lord, they can have no faith, until they make you (O Muhammad) judge in all dispute between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.³⁷

But full and correct implementation of *Shari'ah* is only possible in the conducive atmosphere, i.e. an ideal Muslim society controlled by the Islamic State. This is because it is through the state that there can be sanction by virtue of which it (i.e. the State) has coercive power to enforce the rules of the *Shari'ah*.

However, Islamic state is non-existent due to Western domination and colonialism which has imposed its anti-*Shari'ah* system on the Muslims deeply. As a result of this the Muslim World has become what Abu Sulayman described as; "internally weak, relatively backward, frustrated, conflict ridden, suffering from internal tensions and often controlled and abused by foreign powers."³⁸

He concludes that the Muslim world is in a state of crisis. Sarwar is also of the view that Muslim world today is in excruciating dilemma because even though it has achieved some success in its struggle against colonialism to which it has been subjugated for a long time, yet it has not broken intellectual, psychological, cultural, economical and technological chains.³⁹ And the condition of the Muslim world has been described by Kurshid Ahmad thus:

The Muslim world has suffered at the hands of the West in the past and which remains even today weak materially, economically, technologically and militarily, is now being projected as a threat to the west. Their effort to rediscover their identity and set their own house in order are looked upon as a challenge to the west.⁴⁰

Moreover, the West, and U.S.A. in particular nowadays plan to subjugate Islam to their own system which, according to them, must be subservient to their secular system, thereby establishing "modern", "civil" or 'democratic' Islam and by so doing reducing the real Islam to "religion" according to their own perception, namely private affairs (only between God and Man). This is because to them, we are now in the new age of rationalism which has been characterized by its claim as the sources of human values that could be derived by every

individual without any reference to any divine authority or revealed message. Religion is thus denied any public function and influence in shaping matters of public policy.

It is obvious then that religion, in the West, has been made insignificant by being reduced to personal wish or interest of an individual. This has posed a threat to even meaningful existence and interpersonal relationships that are cultivated by the presence of religion. And in its place personal greed and intensified individualism are created. I am sure even the Muslims are suffering from this terrible disease because of this fact which has originated from the secular system of education earlier important to them from the West which has helped to weaken their Islamic values and thereby produced people who are ignorant of the real meaning of Islam.

Lack of knowledge of or having a very little knowledge about the real Islam is the most terrible and dangerous factor responsible for the crisis that almost engulfed the Muslim world. For this reasons Islam has become a stranger among the Muslim as the Prophet (S.A.W.) predicted in a hadith narrated by at-Tirmidhi in which he was reported to have said, “Islam started as a stranger and it will return as a stranger” 41. On this Muhammad Qutb has this to say:

In fact the ignorance about what really Islam is, in which the (Muslim) *Ummah* lives, is the enemy number one of the Islamic movement, and the greatest obstacle for the *da’awah* (the propagation of Islam) and the greatest weapon for fighting the *da’awah* and creating obstacle to it”.⁴²

If Islam has become stranger to Muslims, it is then not surprising if it becomes the most misunderstood religion in the West. “A religion that stands for peace and justice has been misinterpreted as a religion of war and fanaticism” ⁴³

For all that has been explained the Muslims’ life situations (even in Nigeria) are governed by un-Islamic system, and

especially their political system, is in direct contradiction with the ideal arrangement of Islam. And we have seen how helpless the Muslims are to the extent that they have no say in deciding their life according to *Shari'ah*. Now the question is: can they participate in controlling their affairs through a system that is in direct contradiction with the system in which they believe (i.e the *Shari'ah*) because they cannot do so, in the circumstance, according to it.

This question can be answered, without fear of contradiction, in the affirmative. Muslims can participate in the secular politics, under the circumstance. Their participation is a justified but unpleasant reality based on the following reasons and conditions:

1. The most appropriate proof or support for the participation in politics or any other activities in a non-Islamic setting or government is the principles of 'facing conflicts'. This is because in any situation not governed by the *Shari'ah*, things are mostly not in black and white, good or bad but mixtures. In such situations, the *Shari'ah* has provided that a lesser evil is tolerated in order to avert or remove a greater evil (*irtikabu akhaffud Dhararayn*). Thus a harm is tolerated if a benefit is gained that overweighs it. Similarly, a benefit is forfeited for a greater one or in order to eliminate an evil more serious than losing that benefit. It is under this falls the famous "Shielding" ruling decided by the jurists according to which where the Muslim army is allowed to attack the enemy who uses the Muslim hostages as human shield, even if that means killing the hostages, instead of retreating and accepting defeat which is more harmful to the Muslim *Ummah*. Imam al-Ghazali accepts that this is permissible under the *Shari'ah* in the name of *at Maslahah ad-Darariyyah* (Essential Public Interest).

Many Muslims scholars and jurists, particularly Ibn Taymiyyah see the participation of Prophet Yusuf (A.S.) in an

Un-Islamic system, *Dinul Malik* (The law of the king) as the Qur'an, 12:76 calls it, under this.⁴⁵

2. So the case of Prophet Yusuf (A.S.) is another justification for the political participation of Muslims in a non-Islamic system. Many books of Tafsir (Commentary of the Qur'an) have been studied by the writer of this paper with regard to the verses in *Surat Yusuf* about his participation in the then government of Egypt which was un-Islamic. The following are the conclusions reached from the study:-

i. All the commentators (*al-Mufasssirun*) agree that he did not accept it for worldly gains. Rather he did it for the sake of *da'awah* and for relieving the people from their sufferings and injustice; Some are of the view that he was begged to take it; others hold that he asked for it as the explicit words of the Qur'an show (12:55)

He (Yusuf) said, "Place in my charge the storehouses of the land; behold, I shall be a good and knowing keeper."⁴⁶

ii. But he asked for it in accordance with jurisprudenceian maxim of "going for the lesser of the two evils and the higher of the two goods." And there was nobody capable (like him); it then became *wajib* (obligatory) on him to ask for it so as to avert the imminent catastrophe.

iii. Some argue that since the foundation of the *Shari'ah* had not been established in the society and his aim was towards fulfilling a fundamental objective of the *Shari'ah* (i.e. justice), it would be meaning less to go after comparatively "minor" injunctions liken to asking for the position and avoiding self praising in the process.

B. The Authority of Yusuf (A.S)

Some commentators portray him as just an employee in the system; while others argue that he becomes the king. However, from the explicit words of the Qur'an one may incline to take the view that he was more of the Executive Prime Minister or President working with a ceremonial king.

This is because it was evident that there was a king (*Malik*) other than Yusuf (A.S.) who was called in the *surah Azeez*. Nevertheless it was also evident that Yusuf (A.S.) had executive powers.

c. The System that Governed:

It is understandable from the *surah* that there was a set of rules or constitution (*dinul-Malik*) in operation, which Yusuf managed to avoid in handling his brother's case. And there is no evidence that he changed the government to an Islamic one. In fact Ibn Taymiyya is emphatic that he could not, but he did what he could of reform and justice. The verse in *suratu Ghafir* (40:34) and the mission of Yusuf (A.S.) support this explanation.

This case of Yusuf's participation is probably the strongest proof for justifying participation in a non-Islamic government.

3. Another justification is in the form of a jurisprudential principle according to which "*al-Umur Bi Maqasidiha*), (Matters are determined according to their objectives, which means that any act of human being is judged in the light of the intention or purpose it seeks to have effect.⁴⁷

4. Another justification yet is the principle of *Shari'ah* that provides that where the practice or implementation of the ideal (*al-Mahal*) is not possible, under the circumstance, Muslims are only expected to do what is practically possible. Put in a form of maxim, Sheikh Yusuf al-Qaradawi describes the principle as: *An-Nuzul Minal Mathalil A'la Ilal Waq'ih Adna*⁴⁸ But as Ibnu Taymiyyah explained, it is obligatory on the Muslims to strive (and not to relent their efforts) until they succeed in achieving to implement the ideal.

However, participation in a non-Islamic system has to be guided by the following conditions implied from the *Shari'ah* principles:

- i. That the participation should solely be for the sake of Allah and not for accumulating wealth or attaining power and influence.
- ii. That there must be an overwhelming benefit (*Maslahah Rajihah*) for the society or forestalling of harm.
- iii. That the benefit must be sufficient enough as to outweigh any harm or violation of the injunction of the Shari'ah or the harm to be warded off should be big enough as to warrant (the commission of) any other harm that may be met on the way.
- iv. That to properly fulfil (ii) and (iii), it is necessary that the decision for the participation emanating from the judgment on benefits or harms, must be a collective one and renewable.
- v. The *Ummah* (community) should decide on who participates, when and where with due consideration to the competence and capability of the person participating.
- vi. That the participation should be reviewed from time to time to see whether it is achieving its goals.
- vii. That the participants should be symbol and example of Islam and not upholders of *Jahiliyyah* (un-Islamic system). Thus they should be guided by the Islamic codes of conduct.
- viii. That the participants should not have love for the system and never be shaky in their *wala* (alliance) for Islam and *bara* (non-alliance) against anything that is against Islam. They should, in fact, be guided in all their activities by the *hadith* in which the Prophet (S.A.W) was reported to have instructed the Muslim that, "Whoever of you sees evil (anything that is against the *Shari'ah*) should change it with his hand (i.e. by force), and if it is not possible then with his tongue; but if this is not possible then with his heart. But this is the weakest form of *Iman* (faith)." ⁴⁹

7. CONCLUSION

We have seen that the *Shari'ah* is a complete system of life which is quite distinct from any other system for it originated from the Creator and for that reason it is comprehensive, just,

universal and practicable under any circumstance. And implementing it is regarded as a worship for which the implementer is rewarded and failure to do that imposes punishment, at least in the Hereafter, on him. This system can only operate in a conducive atmosphere and cannot operate under any other system. So to debate whether it is compatible with democracy (as a system) or not, or whether it is complementary to or is in conflict with Electoral Act or Law is futile or less productive.

However, democracy as a system, not with its literal meaning is in direct contradiction to the *Shari'ah* system in which the Muslim must believe. But in view of the fact that the Muslim are under serious subjugation to the Western system which contradicts Islam and the fact that they cannot change it over-night, *Shari'ah* being a practical system has given concession to them to participate in the prevailing system with all the conditionalities fully explained by the Muslim scholars. But they should not relent in their efforts to see that *Shari'ah* system is back to govern their life. And the most important thing in the process is clear and proper understanding of what Islam is all about.

ENDNOTES

1. Al-Hilah, M.T. and Khan, M.M. (1996), Interpretation of the Meaning of the Noble Qur'an, Maktabatu Dari's-Salam, P. 593.
2. al-Qur'tabi, (n.d) al-Jami'u Li Ahkamil Qur'an Vol.16, p.10 quoted in Zaydan, (n.d), al-Madkhal Li Dirasatish-Shari'ah al-Islamiyyah. P.38.
3. al-Hilalil and Khan, supra at. p.208.
4. Ibid. at p.174.
5. Ibid. at p.360.
6. Shacht, J. (n.d), The Origin of Muhammad Jurisprudence, p.1.
7. Most of the discussion on the nature of Shari'ah has been summarized from al-Qardawi's al-Khasa'i-sul Ammah Lil-Islam (1977), Darul-Ma'arif, pp.170-171 and Introduction to Islam Publishing and Distribution Cairo, Egypt, P.140.
8. Asad, M. (1980), The Message of the Qur'an Dar al-Andalus, Limited, Gibraltar, p.621.
9. Ibid.
10. Moten, A. and Noor, N.M. (2007), Terrorism and Democracy: The West and the Muslim World, Thomson Learning, Singapore, p.37.
11. Asad, M. (), The Principles of State and Government in Islam, Islamic Book Trust, Kuala Lumpur, p.19.
12. Mawdudi, S.A. (1967), Islamic Law and Constitution, translated and edited by Kurshid Ahmad, Lahore Islamic Publications Ltd. P.235.
13. Ibid (1980), at p. 137.
14. Hawwa, S. (1981), al-Islam, Darul Kutbil-Ilmiyyah, Beirut, Labenon, p.83.
15. Qutb, S. (2003), In the Shade of the Qur'an (Fi Zilal al-Qur'an), Islamic Foundation, Leicester, U.K., Vol. viii, p.137.
16. Ibid at p.138.
17. See: Encyclopedia of Religion and Ethics, Vol.2, p.347, edited by James Haslings.

18. Maryam Jamila was a Jewess living in New York but converted to Islam in early seventies and migrated to Pakistan. She authored many books on Islam and the Western society.
19. Jameelah, M. (1971), Islam versus the West, Muhammad Yusuf Khan, Lahore, pp.7-10. She also discussed this issue in her Islam and Modernism and Western Civilization Condemned by Itself, Vol.1
20. Sulaiman, I. (1978), The Shariah and Nigerian Unity a lecture delivered to the Muslim Students' Society of Nigeria, Institute of Administration, A.B.U., Zaria Branch, on February, 24, 1978. p.5.
21. Muhammad Asad was the grandson of an Orthodox rabbi. Born in the Polish city of Lvov who converted to Islam and since then he travelled widely and worked throughout Muslim World. He authored many books on Islam, including his Magnum opus, The message of the Qur'an. He then settled in Lisbon until his death.
22. Asad, M. (1960), Is Religion a Thing of the Past? Student's Voice Publications, Pakistan, p.20.
23. Ibid. at p.21
24. Yahya, D. (1976), Secularism and its Challenges to Islamic Education and Muslim Society, a paper presented at the International Seminar on Islamic Education held at Bayero University, Kano, December, 1976, p.9.
25. Quoted in Lari, M.R. (n.d), Western Civilization Through Muslim Eyes, p.62. Also quoted in Qardawi, Y. (1983), Shari'atul Islam: Khuluduha wa Salahuha Lit-Tatbiq Fiy Kulli Zamanin Wa Makan, al-Maktabul-Islamiy, p.98.
26. Quoted by Abul Hasan Nadwi in his Western Civilization, Islam and Muslim (n.d), Academy of Islamic Research and Publications, India pp.50-51.
27. Lewis, B. (1968), The Emergence of Modern Turkey, Oxford University Press, p.424.
28. Jan, A.U. (2003), The End of Democracy, Pragmatic publishing, Canada, P.42.

29. Ibrahim, B.Y., (2006), "Election Petitions in Nigeria: Buhari vs. Obasanjo in Perspective" in Ahmadu Bello University, Law Journal (ABULJ), p.1.
30. Agbokoba, O. (2003) Manual of Election Petition in Nigeria, Huri Laws. Pp.1-2.
31. Ibrahim (2006), *Infra* at p.2.
32. Supreme Court Judgment in Buhari Vs. Obasanjo 20 (2005) 13 NWLR 1.
33. S. 146(1) of the Electoral Act, 2006.
34. Ibrahim (2006), *Infra* at pp.23-24.
35. al-Hilali and Khan (1996), *supra* at pp.117-118,
36. *Ibid.* at p.568.
37. *Ibid.* at p.118.
38. Abu Sulayman, A.A. (1994), Towards an Islamic Theory of International Relations: directions for Methodology and Thought, Hendon, IIIT, p.1 quoted in Muhammad, A and Ahsan, M. (2002), Globalization or Recolonization: Muslim World in the 21st Century, Ta-Ha publishers, Ltd, London, P.23.
39. *Ibid*
40. Ahmad, K. (1995), Islam and the New World Order, quoted in Koreshi, S.M. Western Fundamentalism in Action: New World Order, Institute of Policy Studies, Islamabad, Pp.5-6.
41. Narrated by Muslim, at-Tirmidhi, Ibn Majah, ad-Darimi and Ahmad ibn Hanbal.
42. Qutb, M. (1987), Waqi'unal-Mu'asir, Mu'assisatul-Madinah, S/Arabia, 2nd ed. P.440.
43. Naqvi, N.H. (1984), Principles of Islamic Economic Reforms, Institute of Developing Economic Reforms, Islamabad, Pakistan, p.33.
44. Badran, A.B. (1984), Usulul-Fiqhil-Islami, Mu'assassatu Shababi-Jami'ah, pp.215-216.
45. On this see Ibn Taymiyyah's Majmu'ul-Fatawi, Vol.22.
46. Asad, M. (1980), The Meaning of the Qur'an, Dar al-Andalus, Gibraltar, 345.
47. See: Laldin, M.A. (1965), A Mini Guide to Shari'ah and Legal Maxim, CERT publications, Kuala Lumpur, Malaysia, p.109.
48. al-Qardawi, Y. () Al-Khasa'isul Amma Lil Islam, op.cit. At p.

49. It was narrated by Muslim on the authority of Abu Sa'id al-Khudri.